

EXHIBIT C

1
2 COURT OF COMMON PLEAS
3 HAMILTON COUNTY, OHIO
4
5
6 JANET NOLTE, et al.,
7 Plaintiff,
8 VS. CASE NO. A-9907039
9 OHSL FINANCIAL CORP., VOLUME IV
10 et al.,
11 Defendants.
12
13 Continuation of the deposition of
14 KENNETH HANAUER, a witness herein, called by
15 the plaintiff for cross-examination, pursuant
16 to the Ohio Rules of Civil Procedure, taken
17 before me, Lee Ann Williams, a Registered
18 Professional Reporter and Notary Public in and
19 for the State of Ohio, at the offices of Gene
20 Mesh & Associates, 2605 Burnet Avenue,
21 Cincinnati, Ohio 45219, on Tuesday, August 8,
22 2000, at 1:00 p.m.
23
24
25

1 APPEARANCES:
2 On behalf of the Plaintiff:
3 Michael G. Brautigam, Esq.
4 Gene Mesh & Associates
5 2605 Burnet Avenue
6 Cincinnati, Ohio 45219
7 On behalf of the Defendant:
8 Jamie M. Ramsey, Esq.
9 Keating, Muething & Klekamp
10 1800 Provident Tower
11 One East Fourth Street
12 Cincinnati, Ohio 45202

STIPULATIONS

11 It is stipulated by and between counsel for
12 the respective parties that the deposition of
13 KENNETH HANAUER, a witness herein, called by
14 the plaintiff for cross-examination pursuant to
15 the Ohio Rules of Civil Procedure, may be taken
16 at this time by the notary; that said
17 deposition may be reduced to writing in
18 stenotypy by the notary, whose notes may then
19 be transcribed out of the presence of the
20 witness; and that proof of the official
21 character and qualifications of the notary are
22 expressly waived.
23
24
25

1 INDEX 742

2	<u>Examination of KENNETH HANAUER</u>	<u>Page</u>
3	By Mr. Brautigam:	743, 799
4	By Mr. Ramsey:	788
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 KENNETH HANAUER 743
2 having been previously duly sworn, further
3 testified as follows:
4 CONTINUED CROSS-EXAMINATION
5 BY MR. BRAUTIGAM:
13:05:50 6 Q. Good afternoon, Mr. Hanauer.
13:05:51 7 A. Good afternoon, sir.
13:05:52 8 Q. I remind you that you're still
13:05:54 9 under oath.
13:05:55 10 A. Okay.
13:05:55 11 Q. Mr. Hanauer, we talked at length
13:05:58 12 last time about the proxy materials and the
13:06:00 13 prospectus. Do you remember generally that
13:06:02 14 testimony?
13:06:02 15 A. Yes, sir.
13:06:03 16 Q. And we talked about the vote of
13:06:05 17 the Board of Directors of OHSL unanimously
13:06:10 18 approving the transaction. Do you remember
13:06:12 19 that testimony?
13:06:13 20 A. Yes, sir.
13:06:13 21 Q. And you testified over the course
13:06:14 22 of three days that the Board, in fact, did
13:06:18 23 approve the transaction unanimously. Do you
13:06:20 24 remember that testimony?
13:06:21 25 A. That's correct.

744

745

13:06:22 1 Q. Okay. And that is reflected here
 13:06:24 2 on the first page of the proxy materials, where
 13:06:26 3 it says, your Board of Directors has -- excuse
 13:06:30 4 me, your Board of Directors unanimously
 13:06:32 5 approved the acquisition and believes that it
 13:06:35 6 is in the best interest of OHSL stockholders.
 13:06:38 7 Do you see that?
 13:06:40 8 A. Yes, sir, I do.
 13:06:40 9 Q. And that sentence refers to the
 13:06:42 10 8/2/99 vote, correct?
 13:06:45 11 A. Yes, sir.
 13:06:47 12 Q. Okay. You're familiar with the
 13:06:49 13 word unanimously as it's used in that sentence,
 13:06:51 14 correct?
 13:06:52 15 A. Yes, sir.
 13:06:53 16 Q. What do you understand that word
 13:06:54 17 to mean as it's used in that sentence?
 13:06:57 18 A. That everyone that participated in
 13:07:00 19 the vote, voted in favor of the transaction.
 13:07:04 20 Q. Okay. It doesn't say that in the
 13:07:05 21 document, does it?
 13:07:09 22 A. It's inferred with the term
 13:07:11 23 unanimously. I don't believe it does, no, sir.
 13:07:14 24 Q. Okay. It says, your Board of
 13:07:16 25 Directors unanimously approved the

13:07:18 1 acquisition --
 13:07:19 2 A. Yes.
 13:07:20 3 Q. -- stop. Correct?
 13:07:20 4 A. Correct.
 13:07:21 5 Q. Now, as of 8/2/99, who were the
 13:07:24 6 directors?
 13:07:26 7 A. Norb Brinker, Bill Hillebrand, Al
 13:07:30 8 Hucke, myself, Joe Tenoever, Tom McKiernan, and
 13:07:40 9 Howard Zoellner, seven of us.
 13:07:43 10 Q. Okay. And do you think it's a
 13:07:45 11 reasonable reading of the first part of that
 13:07:47 12 sentence, your Board of Directors unanimously
 13:07:51 13 approved the acquisition, stop, that all seven
 13:07:54 14 of the directors you just named voted in favor
 13:07:56 15 of the transaction?
 13:07:59 16 A. That is correct.
 13:07:59 17 Q. Okay. Let's --
 13:08:01 18 A. There was no opposition to the
 13:08:02 19 vote, okay? At the time that we voted, there
 13:08:06 20 was no opposition to the transaction.
 13:08:07 21 Q. Okay. Let me ask the question
 13:08:08 22 again.
 13:08:09 23 A. Okay.
 13:08:10 24 Q. With respect to that first part of
 13:08:13 25 the sentence, your Board of Directors

746

747

13:08:14 1 unanimously approved the acquisition, stop.
 13:08:19 2 A. Um-hmm.
 13:08:19 3 Q. Do you believe as you sit here
 13:08:20 4 today that it's a fair reading of that part of
 13:08:24 5 the sentence that those seven directors you
 13:08:26 6 named, unanimously voted to approve the
 13:08:30 7 transaction?
 13:08:31 8 A. They voted individually for the
 13:08:35 9 transaction, yes, sir.
 13:08:36 10 Q. All seven directors?
 13:08:38 11 A. Yes, sir.
 13:08:39 12 Q. Okay. Let's take a look at what
 13:08:40 13 has been previously marked as McKiernan Exhibit
 13:08:45 14 2, and I'm handing it to you. Have you seen
 13:08:49 15 McKiernan Deposition Exhibit Number 2 before?
 13:08:53 16 A. Yes, sir.
 13:08:54 17 Q. Are you familiar with it?
 13:08:55 18 A. Yes, sir.
 13:08:56 19 Q. Do you recognize it?
 13:08:57 20 A. Yes.
 13:08:58 21 Q. What is McKiernan Deposition
 13:09:00 22 Exhibit Number 2?
 13:09:01 23 A. It's a copy of the minutes of a
 13:09:05 24 meeting held on August 2nd, 1999 of the Board
 13:09:10 25 of Directors, a special meeting of the Board of

13:09:12 1 Directors of OHSL Financial.
 13:09:14 2 Q. And this was the special meeting
 13:09:15 3 that approved the transaction that we're
 13:09:17 4 talking about, correct?
 13:09:18 5 A. That's correct.
 13:09:20 6 Q. Okay. Would you please read into
 13:09:21 7 the record the directors who were present?
 13:09:24 8 A. Brinker, Hanauer, Hillebrand,
 13:09:27 9 Hucke, Tenoever, and Zoellner.
 13:09:30 10 Q. Those are six directors, correct?
 13:09:31 11 A. Absolutely.
 13:09:32 12 Q. Mr. McKiernan was not present,
 13:09:34 13 correct?
 13:09:34 14 A. According to these minutes, he was
 13:09:35 15 not, yes, sir.
 13:09:36 16 Q. In fact, he was in Europe on a
 13:09:38 17 cruise, correct?
 13:09:39 18 A. I believe you're correct. He was
 13:09:41 19 in the Mediterranean, I think, yes.
 13:09:44 20 Q. Okay.
 13:09:45 21 A. If memory serves me, yes.
 13:09:47 22 Q. Would it be fair to say that Mr.
 13:09:49 23 McKiernan, because he was not present, was not
 13:09:51 24 one of the directors who unanimously voted to
 13:09:54 25 approve the transaction?

752

13:15:10 1 2nd, 1999, correct?
 13:15:12 2 A. Yes.
 13:15:14 3 Q. Okay. Did Mr. Brinker vote?
 13:15:17 4 A. I told you I -- whether he said
 13:15:19 5 aye or nay, whether he said aye -- he called
 13:15:23 6 for the vote. Should he have said aye? I
 13:15:26 7 cannot address that. I do not know whether he
 13:15:29 8 uttered anything or not. I, I can't tell
 13:15:31 9 you --
 13:15:32 10 Q. Okay.
 13:15:32 11 A. -- because I don't know.
 13:15:33 12 Q. Okay. Why don't you know?
 13:15:34 13 A. What do you mean, why don't I
 13:15:35 14 know? We didn't sit there and go around the
 13:15:38 15 room, all in favor, aye, and there was some
 13:15:41 16 grumblings and that was it. There was no aye,
 13:15:44 17 aye, aye. There was not a call for a vote of
 13:15:47 18 each individual person as to what their
 13:15:51 19 position was. It just didn't happen that way.
 13:15:54 20 Now, that would be a question why
 13:15:56 21 he -- to him, as to why he didn't call for a
 13:15:59 22 specific utterance from each individual so you
 13:16:03 23 would know whether the relevance of that
 13:16:07 24 paragraph -- you know, whether that paragraph
 13:16:09 25 is correct or not. I can't address that, I

754

13:17:35 1 strike everything after "not correct."
 13:17:38 2 Q. I thought we had covered that a
 13:17:44 3 moment ago. When it says here, your Board of
 13:17:47 4 Directors unanimously approved the acquisition,
 13:17:49 5 stop. We are talking about that special
 13:17:51 6 meeting on August 2nd, 1999, are we not?
 13:17:56 7 A. How would we, the reader of that
 13:17:58 8 document, know that, if you want to be that
 13:18:00 9 specific?
 13:18:01 10 Q. Well, can you answer that question
 13:18:04 11 yes or no?
 13:18:06 12 A. Are we talking about that meeting?
 13:18:08 13 I believe the document is talking about that
 13:18:09 14 meeting, yes.
 13:18:11 15 Q. Okay. Is there any other possible
 13:18:12 16 meeting that you're referring to?
 13:18:14 17 A. There were, there were many
 13:18:17 18 meetings in which all of the directors voiced
 13:18:20 19 opinions as to whether they would and had
 13:18:25 20 intention of approving the transaction.
 13:18:29 21 Q. Was there any meeting, other than
 13:18:32 22 the 8/2/1999 meeting, that you could think of
 13:18:40 23 that would be referring to the first part of
 13:18:43 24 that sentence, your Board of Directors
 13:18:44 25 unanimously approved the acquisition, stop?

13:16:12 1 didn't run the meeting.
 13:16:13 2 Q. Okay. Let me ask you to assume
 13:16:15 3 for the sake of this question that Mr. Brinker
 13:16:17 4 testified that he did not vote in favor of the
 13:16:20 5 transaction or against the transaction. He
 13:16:22 6 just didn't vote. If you assume for the
 13:16:26 7 purposes of this question that that is a fact,
 13:16:28 8 do you believe that the first part of that
 13:16:31 9 sentence --
 13:16:32 10 A. Then his document is wrong, okay?
 13:16:34 11 Q. Okay. Let me finish the question.
 13:16:35 12 Do you believe the first part of that sentence,
 13:16:37 13 your Board of Directors unanimously approved
 13:16:39 14 the acquisition, is correct?
 13:16:52 15 A. I guess you could stretch that
 13:16:54 16 into being it is not correct if he didn't vote
 13:16:59 17 either way. I, I can only assume at this point
 13:17:03 18 that if we sat around the table and nobody
 13:17:06 19 uttered anything, we would still be sitting
 13:17:08 20 there a year later. You know, it was the --
 13:17:16 21 again, in prior meetings and, in fact, when you
 13:17:18 22 look at this paragraph, it does not state that
 13:17:29 23 it is the meeting of August the 2nd that it is
 13:17:32 24 referencing.
 13:17:35 25 MR. BRAUTIGAM: Okay. Move to

755

13:18:48 1 A. No. I believe it was the intent
 13:18:50 2 of this paragraph to refer to the 8/2 meeting.
 13:18:54 3 Q. Do you believe that the vote or
 13:18:58 4 nonvote of the Chairman of the Board of
 13:18:59 5 Directors on this transaction is material
 13:19:01 6 information?
 13:19:03 7 A. Whether he voted or not?
 13:19:07 8 Q. Yes.
 13:19:07 9 A. I believe that -- yeah, I believe
 13:19:13 10 that could be material information.
 13:19:15 11 Q. Okay. Do you believe that it's
 13:19:16 12 properly disclosed in this document, based on
 13:19:18 13 our conversation today?
 13:19:19 14 MR. RAMSEY: Objection.
 13:19:21 15 A. It is not in the document that he
 13:19:22 16 did not vote, if that is his testimony that he
 13:19:26 17 did not.
 13:19:27 18 Q. Okay. Actually it was also the
 13:19:28 19 testimony of Mr. McKiernan. Mr. McKiernan --
 13:19:31 20 A. Mr. McKiernan wasn't even there,
 13:19:33 21 how would he know what Norb did?
 13:19:37 22 Q. Actually, from the Board --
 13:19:39 23 A. Mr. McKiernan cannot testify to
 13:19:40 24 what Norb did on 8/2, he was thousands of miles
 13:19:43 25 away.

756

13:19:44 1 Q. Actually I take that back. What
13:19:45 2 Mr. McKiernan said, and what I meant to convey,
13:19:49 3 was that Mr. McKiernan testified that it was
13:19:52 4 plain that the phrase, your Board of Directors
13:19:57 5 unanimously approved the acquisition, stop,
13:20:00 6 meant that of those directors who were there
13:20:03 7 and who were eligible to vote, that they had
13:20:05 8 unanimously approved the transaction. And I
13:20:08 9 pointed out that, well, that's not true and
13:20:10 10 correct, either.
13:20:11 11 A. Okay.
13:20:12 12 Q. But anyway, that's between --
13:20:13 13 A. Okay.
13:20:14 14 Q. -- Mr. McKiernan and myself.
13:20:16 15 A. Okay.
13:20:16 16 Q. I did not mean to misspeak
13:20:18 17 earlier.
13:20:20 18 A. Sure.
13:20:32 19 Q. Do you believe that whatever Mr.
13:20:34 20 Brinker did as Chairman of the Board should
13:20:36 21 have been disclosed to the shareholders? In
13:20:38 22 other words, if he didn't vote to approve the
13:20:40 23 transaction, fine, he could have said the
13:20:42 24 directors who were there and who were eligible
13:20:45 25 to vote, did vote to unanimously approve the

758

13:21:49 1 I was not aware of his abstention. I took
13:21:54 2 these minutes and if it was his will and wish
13:22:02 3 to have abstained, then he should have told me,
13:22:06 4 because if you -- he should have told me of
13:22:08 5 that fact. Because if you look through our
13:22:11 6 corporate minutes both on the savings and loan
13:22:14 7 side and on the holding company side, at
13:22:17 8 various meetings you will see abstentions
13:22:21 9 noted. That was something that I did on a
13:22:22 10 regular basis and I made sure I got the names
13:22:25 11 right.
13:22:27 12 So it was not an act that was
13:22:30 13 deliberate, it was an act that -- you know, it
13:22:34 14 was unanimous. He, in fact, declared that it
13:22:39 15 was unanimous and we moved on. Now, if it was
13:22:42 16 not unanimous and he didn't vote, or if it was
13:22:46 17 unanimous of those voting, then he should have
13:22:48 18 made some comment to the effect that the
13:22:53 19 transaction is approved by all of those voting
13:22:57 20 and I abstained, or what have you. He didn't
13:23:00 21 do that.
13:23:07 22 As the minute taker, I don't
13:23:07 23 believe -- and I'm not trying to absolve myself
13:23:07 24 of anything here -- I don't believe that that
13:23:08 25 was my responsibility to try to drag out of him

13:20:49 1 transaction, but I abstained. Do you think
13:20:51 2 that would have been better?
13:20:57 3 A. If it is his testimony and intent
13:21:01 4 to have abstained, yes. If he purposely, if he
13:21:06 5 purposely did not -- if he purposely did not
13:21:13 6 vote, then I believe that should have been
13:21:15 7 disclosed, yes, sir.
13:21:16 8 Q. Okay.
13:21:17 9 A. I believe that.
13:21:18 10 Q. It is his testimony that he
13:21:19 11 purposely did not vote, because he said he
13:21:22 12 never voted. He voted only to break ties and
13:21:24 13 he couldn't remember any ties. And he
13:21:26 14 purposely did not vote on this transaction or
13:21:29 15 any other transaction during the time he was
13:21:32 16 OHSL Chairman, although some people seem to
13:21:35 17 remember him breaking a tie.
13:21:37 18 A. Yes, he broke ties.
13:21:38 19 Q. It was his testimony that he did
13:21:39 20 not vote ever.
13:21:41 21 A. Okay.
13:21:43 22 Q. Okay. Why wasn't this disclosed
13:21:45 23 to the shareholders?
13:21:47 24 MR. RAMSEY: Objection.
13:21:48 25 A. I'm going to reiterate it again.

759

13:23:11 1 that he didn't vote in the transaction. It
13:23:13 2 never crossed my mind, because the man was for
13:23:16 3 the transaction very early on in the process.
13:23:20 4 So I would have never dreamt that at the, at
13:23:25 5 the final meeting when everything -- we had
13:23:28 6 done literally everything to be done except
13:23:30 7 take the final vote, that he would, he would
13:23:33 8 abstain from that vote. That never crossed my
13:23:35 9 mind until you raised the question right here
13:23:38 10 along, with Mr. McKiernan not being at the
13:23:41 11 meeting.
13:23:41 12 Q. Was Charlie Crowley in the room
13:23:44 13 when the vote was taken?
13:24:05 14 A. For the actual vote, I'm not sure
13:24:07 15 whether he had stepped out, but I believe that
13:24:11 16 they both were there, that Charlie and Jeff
13:24:16 17 were there.
13:24:16 18 Q. How about Cliff Roe?
13:24:18 19 A. Yes, he was there. That I know,
13:24:20 20 but Mr. -- but Mr. Crowley and Mr. Moritz were
13:24:25 21 in and out, making phone calls, so there is a
13:24:28 22 possibility he was not in the room. I, I am
13:24:31 23 not certain of that, but Cliff was there, yes.
13:24:37 24 Q. Okay. Based on what I've told you
13:24:39 25 today, do you believe that the 8/2/99 special

760

13:24:46 1 meeting of the Board of Directors unanimously
13:24:48 2 approved the acquisition between OHSL and
13:24:51 3 Provident?

13:24:52 4 MR. RAMSEY: Objection.

13:24:54 5 A. My personal opinion is yes,
13:24:56 6 whether he says he did or didn't. The one
13:24:58 7 absent party was totally in favor of it and the
13:25:02 8 Chairman of the Board was in favor of it.
13:25:04 9 Whether there is a legal issue there that can
13:25:06 10 be brought is something totally out of my
13:25:09 11 purview, but yes, I believe that the
13:25:13 12 transaction was unanimously approved.

13:25:18 13 Q. Okay. To approve a transaction
13:25:20 14 unanimously or otherwise, what does it take?

13:25:24 15 A. It takes a quorum of the Board and
13:25:26 16 then a majority of that quorum to approve it,
13:25:29 17 is my understanding.

13:25:31 18 Q. When you say a majority of the
13:25:32 19 quorum, you're talking about votes, correct?

13:25:34 20 A. Correct. If there -- if a quorum
13:25:36 21 is established at five, it would take three of
13:25:38 22 that five.

13:25:39 23 Q. Right. And you testified that you
13:25:41 24 still felt that this was a unanimous approval
13:25:43 25 of the transaction. Is that your testimony?

762

13:27:07 1 approved, that would have clarified that. As
13:27:09 2 to Norb's actions, I can't address that. I
13:27:15 3 still find that difficult that he, he didn't
13:27:19 4 vote one way or the other for the transaction,
13:27:22 5 but that -- again, that's something that he has
13:27:24 6 stated and that's fine. That's -- that's the
13:27:26 7 position he took.

13:27:29 8 Then I believe that the term
13:27:32 9 unanimously should have been stricken from this
13:27:34 10 document and, and reread and reread and reread
13:27:40 11 at all levels, this page. And that should have
13:27:43 12 been taken out of it. Mr. McKiernan, I
13:27:46 13 believe, was back in town before it was printed
13:27:48 14 and he should have said something as well.

13:27:50 15 Q. How about Mr. Roe? How could he
13:27:53 16 let this document go out if he was in the room
13:27:55 17 and he knew that it was not a unanimous vote?

13:27:57 18 MR. RAMSEY: Objection.

13:27:59 19 A. How could he do that? I don't
13:28:01 20 know. He read the document as well. That
13:28:02 21 would be a question for Mr. Roe.

13:28:14 22 Q. Now, you had previously voted to
13:28:16 23 abstain at the July 22nd, 1999 Board meeting.

13:28:22 24 Do you remember that?

13:28:22 25 A. Yes, sir.

13:25:48 1 A. Yes, sir.

13:25:48 2 Q. Okay. And that surprised me, and
13:25:50 3 I'd just like you to explain for the record, if
13:25:54 4 you have two people who didn't vote, one who is
13:25:57 5 not there and one who abstained, how you can
13:26:01 6 sit here under oath and say that you still
13:26:03 7 believe it's a unanimous approval? I
13:26:06 8 understand that they were in favor of it, but
13:26:07 9 that's not what this part of the sentence
13:26:10 10 refers to, is it?

13:26:11 11 A. As I -- as I mentioned, from a
13:26:16 12 legal standpoint, the term unanimously here is
13:26:22 13 obviously causing you and probably is causing
13:26:25 14 other folks difficulty. But, but it is my
13:26:30 15 testimony today that if all seven directors
13:26:35 16 were sitting around this table and this
13:26:39 17 question had been raised of them prior to the
13:26:41 18 taking of the vote, that all seven would have
13:26:48 19 unanimously -- would have voted for the
13:26:49 20 transaction.

13:26:53 21 Again, it is, it is a
13:26:54 22 misstatement, as you pointed out, that Mr.
13:26:58 23 McKiernan was not there. So something to the
13:27:01 24 effect, I guess, that the Board members present
13:27:05 25 at the meeting or something, unanimously

763

13:28:23 1 Q. Let me place what has been marked
13:28:26 2 as Brinker Deposition Exhibit Number 3 in front
13:28:28 3 of you. Have you seen that document before?

13:28:31 4 A. Yes, sir.

13:28:31 5 Q. Are you familiar with it?

13:28:31 6 A. Yes, sir.

13:28:32 7 Q. Do you recognize it?

13:28:35 8 A. Yes, sir.

13:28:35 9 Q. What is Brinker Deposition Exhibit
13:28:37 10 Number 3?

13:28:37 11 A. It is a copy of the special
13:28:39 12 meeting minutes of the Board of Directors of
13:28:42 13 OHSL of July 22nd, 1999.

13:28:47 14 Q. And at this point, when this vote
13:28:49 15 was taken, you did not have your change of
13:28:51 16 control contract in place, correct?

13:29:04 17 A. Let me review where we are here.
13:29:22 18 I believe that's correct.

13:29:24 19 Q. And on August 2nd, 1999, you did
13:29:26 20 have your change of control contract in place,
13:29:30 21 correct?

13:29:31 22 A. Yes, sir, that's correct.

13:29:32 23 Q. And the change of control contract
13:29:34 24 called for a payment of 375,000 by Provident to
13:29:39 25 you, correct?

764

13:29:40 1 A. Yes, sir. In essence that's what
13:29:42 2 it did. It did not name Provident
13:29:45 3 specifically, but by anyone that would take us
13:29:48 4 over, that's correct. Ultimately it was
13:29:50 5 Provident, yes.

13:29:52 6 Q. Okay. Why did you change your
13:29:53 7 vote from abstaining on July 22nd, to in favor
13:29:55 8 of on August 2nd, 1999?

13:29:59 9 A. We had, we had discussed the
13:30:03 10 ramifications of dissenting votes when we came
13:30:09 11 to publication. And for the benefit of the --
13:30:14 12 it was the opinion of certain individuals that
13:30:19 13 if you had a dissenting vote, that could carry
13:30:27 14 some distinct ramifications that might, in
13:30:30 15 fact, cause difficulties down the road in the
13:30:33 16 transaction. So, so in essence, I just gave
13:30:38 17 up. I felt as the last ditch effort on July
13:30:41 18 22nd, I would, I would vote -- or I would
13:30:46 19 abstain from the vote. And by August 2nd, I
13:30:50 20 just gave in and I voted for the transaction.

13:30:54 21 Q. You said in your previous answer,
13:30:56 22 "we had discussed the ramifications of
13:30:58 23 dissenting votes." First let me ask you, who
13:31:01 24 does the "we" refer to in that answer?

13:31:03 25 A. I had talked with different

13:31:06 1 individuals. I had talked with my management
13:31:08 2 team. I had talked with some independent
13:31:14 3 outside counsel and other folks. The majority
13:31:19 4 of professionals agree that a transaction is,
13:31:24 5 is viewed, in the general public's eye, to be a
13:31:30 6 cohesive transaction if, in fact, everybody
13:31:34 7 votes unanimously.

13:31:35 8 Now, counter to that, if, you
13:31:40 9 know, if I personally were going to try to stop
13:31:44 10 the transaction, then, you know, you would vote
13:31:50 11 against it and you would try to garner votes
13:31:52 12 and do those types of things. And that was not
13:31:55 13 my intent. It was going to go, it was evident
13:31:58 14 that it was going to go.

13:32:01 15 My opposition was -- my vehement
13:32:04 16 opposition was voiced before the marketing book
13:32:07 17 was put together. Once the marketing book was
13:32:10 18 out in the hands of those people who were
13:32:14 19 interested in the transaction, I guess one
13:32:17 20 would say I had given up. I had given up the
13:32:20 21 fight.

13:32:21 22 Q. Okay. You said you talked with
13:32:21 23 your management team about this.

13:32:24 24 A. Yes.

13:32:24 25 Q. Did you talk with Terry Todd?

766

13:32:26 1 A. Yes.

13:32:27 2 Q. Do you remember what you said and
13:32:28 3 what he said? If words, fine; if substance,
13:32:32 4 also fine.

13:32:33 5 A. It was just general conversations
13:32:34 6 that again, we had talked about, you know, all
13:32:40 7 of those people that were in favor of the
13:32:43 8 transaction and that -- not that we were going
13:32:46 9 to vote unanimously for it, but that it was
13:32:50 10 going to pass and there was no -- there was no
13:32:56 11 reason to, when it come down to the final vote,
13:32:59 12 to fight, to fight the transaction. We were
13:33:02 13 totally outnumbered. We did not have the
13:33:07 14 backing or the means from a fiscal standpoint
13:33:12 15 to try to do anything.

13:33:13 16 Q. When you said "we" in your
13:33:15 17 previous answer, to whom were you referring to?

13:33:18 18 A. Those folks on management and in,
13:33:22 19 and in the company that might try to keep the
13:33:26 20 thing glued together.

13:33:27 21 Q. Well, how about at the Board
13:33:29 22 level?

13:33:29 23 A. Didn't approach anyone at the
13:33:31 24 Board level about that.

13:33:33 25 Q. Okay. Did you talk to Cliff Roe

767

13:33:35 1 about this very point?

13:33:36 2 A. About a unanimous vote?

13:33:39 3 Q. Or the ramifications of dissenting
13:33:41 4 votes.

13:33:42 5 A. No, sir.

13:33:43 6 Q. You said you talked to your
13:33:44 7 outside counsel.

13:33:45 8 A. Um-hmm.

13:33:45 9 Q. That's the person from Vorys,
13:33:47 10 Sater?

13:33:48 11 A. No, I talked with some other
13:33:49 12 individuals.

13:33:50 13 Q. Okay. With whom did you speak?

13:33:52 14 A. I talked with Bill Sulau, who
13:33:54 15 is -- was our corporate counsel at Oak Hills.
13:34:00 16 And I also talked with, with Barry Forrester,
13:34:07 17 who is not an attorney, but I sought him as
13:34:10 18 counsel, just in the general sense of the word
13:34:12 19 counsel.

13:34:12 20 Q. Now, when you say Bill Sulau, is
13:34:15 21 there an older Bill Sulau who's in his
13:34:18 22 seventies or eighties?

13:34:20 23 A. A Charles Sulau, his father.

13:34:22 24 Q. But this Sulau --

13:34:24 25 A. Is his son.

768

13:34:25 1 Q. And he's an attorney?
 13:34:26 2 A. Yes, sir.
 13:34:27 3 Q. And what did you say to him and
 13:34:28 4 what did he say to you?
 13:34:29 5 A. Again, we just -- in general, we
 13:34:31 6 chatted about the transaction. He had -- on
 13:34:36 7 one occasion he called and stated his father
 13:34:39 8 was upset about the transaction. And I said
 13:34:45 9 his father was not alone and that, you know, it
 13:34:53 10 was going to go and, you know, it was to the
 13:34:55 11 benefit of everyone at this point in time,
 13:34:57 12 unless we were going to launch some, some major
 13:35:00 13 undertaking, to go along with the transaction.
 13:35:04 14 Q. Okay. How about with Barry
 13:35:06 15 Forrester?
 13:35:07 16 A. Um-hmm.
 13:35:07 17 Q. What did you say to him and what
 13:35:09 18 did he say to you?
 13:35:14 19 A. There's no way that I could
 13:35:14 20 capsule those discussions. Those discussions
 13:35:14 21 went over years. I mean, we -- we talked about
 13:35:19 22 different transactions on many occasions, and
 13:35:26 23 the fact that -- before we ever got far into
 13:35:31 24 this process, marketing books weren't out, I
 13:35:36 25 mean nothing was really happening.

770

13:36:53 1 Q. Okay. Between July 22nd, 1999 and
 13:36:56 2 August 2nd, 1999, did you feel like you had
 13:36:59 3 lost an ally with the resignation of Mr.
 13:37:04 4 Herron?
 13:37:05 5 A. I was saddened to see Mr. Herron
 13:37:08 6 go. I don't think I lost an ally. I think
 13:37:14 7 he's still in agreement that the transaction
 13:37:16 8 wasn't in the best interest and just did not --
 13:37:22 9 I guess to answer your question succinctly, I
 13:37:27 10 don't feel I lost an ally, I believe he is
 13:37:29 11 still an ally. He didn't change his mind.
 13:37:35 12 Yes, I, I lost him in the fact that he was not
 13:37:39 13 on the Board at the time of the vote, but I
 13:37:44 14 don't think that would have made any
 13:37:45 15 difference.
 13:37:46 16 Q. Okay. Between July 22nd, 1999 and
 13:37:48 17 August 2nd, 1999, did you have any discussions
 13:37:52 18 with Mr. Zoellner about what was going to
 13:37:57 19 happen at the next special meeting?
 13:38:01 20 A. Not that I can recall.
 13:38:06 21 Q. Did you perceive Mr. Zoellner as
 13:38:09 22 voting in favor of this transaction only
 13:38:12 23 reluctantly?
 13:38:13 24 A. Yes. Mr. Zoellner was a proponent
 13:38:16 25 of continuing an independent operation.

13:35:39 1 He had talked about different
 13:35:41 2 transactions throughout the country that --
 13:35:42 3 where the management was not on board with the
 13:35:47 4 transaction and, and how it would literally --
 13:35:51 5 it can take a transaction apart and that it was
 13:35:54 6 to the benefit of our Board to, first of all,
 13:35:56 7 have management on board, have them locked up
 13:36:01 8 with, with contracts. And then at the same
 13:36:06 9 time, he was quite taken aback that McDonald
 13:36:11 10 had not required --
 13:36:15 11 Q. The opinion of management in the
 13:36:17 12 document?
 13:36:17 13 A. No, no, no. I cannot think of the
 13:36:21 14 term, voting agreements.
 13:36:24 15 Q. Oh.
 13:36:25 16 A. That, in fact, prior to entering
 13:36:27 17 into the transaction or coming down to the last
 13:36:29 18 day, August 2, if you will, that they had not
 13:36:34 19 required those to be executed, because in a lot
 13:36:37 20 of documents you see that, and that never came
 13:36:40 21 to fruition in our transaction.
 13:36:43 22 Q. Okay. Other than what you've
 13:36:44 23 mentioned, anyone else you can recall talking
 13:36:47 24 to about ramifications of dissenting votes?
 13:36:50 25 A. I don't believe so.

771

13:38:20 1 Q. Despite his vote as a director in
 13:38:22 2 favor of the transaction?
 13:38:23 3 A. Absolutely.
 13:38:26 4 Q. Then why did he vote in favor of
 13:38:27 5 the transaction as a director?
 13:38:29 6 MR. RAMSEY: Objection.
 13:38:29 7 A. That would be a question you'd
 13:38:31 8 have to ask Howard.
 13:38:41 9 Q. Mr. Hanauer, if I can sum this up,
 13:38:44 10 it seems to me that you've learned for the
 13:38:46 11 first time here today that Mr. Brinker did not
 13:38:48 12 vote in the transaction on August 2nd, 1999 at
 13:38:54 13 the special meeting, at least as per his
 13:38:58 14 testimony; is that fair?
 13:38:59 15 A. That's my testimony.
 13:39:01 16 Q. And you did not remember at our
 13:39:08 17 prior sessions and until I put the minutes in
 13:39:13 18 front of you, that Mr. McKiernan was out of the
 13:39:16 19 country on August 2nd, 1999 and, therefore, did
 13:39:20 20 not vote to approve the transaction on August
 13:39:22 21 2nd, 1999, correct?
 13:39:25 22 MR. RAMSEY: Objection.
 13:39:25 23 A. That is correct.
 13:39:26 24 Q. But you weren't the only one who
 13:39:28 25 was assembling these documents who would have

772

13:39:30 1 or should have known these facts, correct?
 13:39:33 2 MR. RAMSEY: Objection.
 13:39:35 3 A. That should have known that these
 13:39:37 4 people were out of town?
 13:39:38 5 Q. Well, only Mr. McKiernan was out
 13:39:41 6 of town.
 13:39:42 7 A. Okay.
 13:39:43 8 Q. But --
 13:39:44 9 A. Or that he didn't -- I don't know.
 13:39:47 10 Let's address Norb's voting, nonvoting -- the
 13:39:52 11 nonvoting issue. I don't know that anyone was
 13:39:58 12 aware or not aware of the fact of how he voted
 13:40:04 13 or did not vote, abstained in this case.
 13:40:07 14 Because again, in the minutes it was not -- it
 13:40:11 15 was not pointed out that that's, in fact, how
 13:40:14 16 it should be.
 13:40:15 17 And it's ironic that the minutes,
 13:40:17 18 I believe this is the last minutes before
 13:40:19 19 August 2, I did just as I testified, point out
 13:40:24 20 when we had negative votes, you saw that. And
 13:40:28 21 when we had abstentions, you saw that. So it
 13:40:32 22 was -- you know, it was not a -- any action on
 13:40:38 23 my part to try to conceal the fact that, that
 13:40:42 24 Norb did not vote.
 13:40:47 25 Q. How about Mr. McKiernan being out

774

13:42:10 1 this document together, that's the furthest
 13:42:18 2 thing from your mind that there was someone
 13:42:20 3 absent from this meeting that was -- I believe
 13:42:23 4 if it had been a -- had Tom Herron, who was
 13:42:31 5 opposed to the transaction, not been at the
 13:42:34 6 meeting, I believe it would have been recalled,
 13:42:43 7 because people could then raise the question,
 13:42:46 8 you took the vote when you knew you could put
 13:42:49 9 unanimous in there because he wasn't there.
 13:42:51 10 That is not the case with Mr.
 13:42:52 11 McKiernan. Mr. McKiernan, I believe, would
 13:42:59 12 have voted for the transaction, had he been
 13:43:01 13 given the opportunity to do so, because
 13:43:03 14 certainly he was the one that led McDonald to
 13:43:05 15 us and, and did all the -- did all of the work
 13:43:08 16 and was the proponent of the transaction.
 13:43:10 17 Q. Right, absolutely.
 13:43:11 18 A. But --
 13:43:12 19 Q. Mr. McKiernan's testimony in
 13:43:13 20 substance was, yes, had he been there, he would
 13:43:17 21 have voted in favor of the transaction.
 13:43:18 22 A. Okay. Okay.
 13:43:19 23 Q. But my question was, why wasn't
 13:43:20 24 that addressed with a footnote or another
 13:43:23 25 sentence?

13:40:49 1 of town? I mean, with all of the people who
 13:40:51 2 looked at this document, referring to the proxy
 13:40:53 3 materials and the prospectus, how was that
 13:40:58 4 missed?
 13:40:59 5 A. I can't answer that. Again, we
 13:41:03 6 reviewed and did not sit there and head count
 13:41:09 7 when it came down to a statement of
 13:41:12 8 unanimously -- unanimously approved. How was
 13:41:17 9 it? I don't know. That's something that
 13:41:22 10 again, in hindsight, I would think that someone
 13:41:30 11 possibly could have mentioned, you know, Tom
 13:41:31 12 was -- Tom was in Europe, that's not correct.
 13:41:37 13 I believe you stated it was Tom's
 13:41:38 14 testimony that, that he felt unanimously meant
 13:41:43 15 of those present and able to vote at that point
 13:41:47 16 in time. So if that's the case, was that the
 13:41:51 17 feeling of everyone else in the room and
 13:41:53 18 everyone else that looked at this document, you
 13:41:55 19 know.
 13:41:56 20 I would have to exonerate my
 13:41:58 21 management team who reviewed the document, they
 13:42:01 22 didn't know, you know, who was at the meeting
 13:42:05 23 and who wasn't, so I don't think they were
 13:42:07 24 aware that Tom was out of the country, maybe
 13:42:09 25 they were. But again, when you start putting

775

13:43:23 1 A. It was --
 13:43:24 2 MR. RAMSEY: Objection.
 13:43:24 3 A. It was missed, just we're human,
 13:43:28 4 it was missed.
 13:43:29 5 Q. Okay. Knowing what you know now
 13:43:33 6 and accepting my representation about Mr.
 13:43:35 7 Brinker's nonvote as true, do you have any
 13:43:38 8 problems with this document?
 13:43:43 9 MR. RAMSEY: Objection.
 13:43:53 10 A. The term unanimously approved is
 13:43:55 11 in there, that is an incorrect term. I believe
 13:43:59 12 we've gone through this thing page after page
 13:44:01 13 and found a couple of other items that were in
 13:44:03 14 there as well, but, but in the overall scheme
 13:44:08 15 of things, I don't think it would have changed
 13:44:10 16 anything.
 13:44:11 17 This page is wrong. I believe at
 13:44:17 18 this point in time there's, there's nothing
 13:44:20 19 that could be done to change -- there's nothing
 13:44:23 20 that can be done that is going to change that.
 13:44:27 21 Q. Okay. A couple of things. First
 13:44:29 22 of all, if you could limit your answer not to
 13:44:32 23 whether or not you feel that this would have
 13:44:33 24 changed the outcome or anything like that, and
 13:44:36 25 to go back in time, we're sitting here on

776

13:44:38 1 August 8th, 2000, let's go back to when this
13:44:44 2 document was being assembled. Knowing what you
13:44:48 3 know now, is there anything that you would have
13:44:48 4 done differently with respect to the ultimate
13:44:52 5 publication and dissemination of this document?

13:44:55 6 A. Certainly, I would have changed
13:44:56 7 that paragraph to read correctly.

13:44:58 8 Q. Okay. And how would you have
13:45:00 9 changed that paragraph? What language would
13:45:01 10 you use?

13:45:03 11 A. Well, if it would have -- if I
13:45:05 12 would have known, first of all, that the
13:45:06 13 Chairman of the Board would have abstained, I
13:45:08 14 would have called on an attorney to write that
13:45:12 15 paragraph.

13:45:14 16 Q. Okay. Well, I can't write it, so
13:45:15 17 what language would you use?

13:45:17 18 A. I don't know. I don't think --
13:45:18 19 and again, I didn't write it, I don't think
13:45:19 20 that's relevant. What would I have done, that
13:45:22 21 the Chairman of the Board was too chicken to
13:45:25 22 vote yes or no on the transaction? I don't
13:45:27 23 know.

13:45:28 24 I mean, it was his, it was his --
13:45:29 25 it was his wish that we forward -- that went

778

13:46:30 1 happened to his company, if you will. And
13:46:34 2 quite frankly, a year later with his net worth
13:46:38 3 being tapped away as it's been, he's probably
13:46:41 4 got some second thoughts on the thing, but you
13:46:44 5 have to move -- you have to move on.

13:46:46 6 For him to say that he didn't vote
13:46:48 7 for the transaction, the shareholders did -- he
13:46:51 8 had the wherewithal to stop that. It would
13:46:54 9 have never gotten there if he had had any, any
13:47:01 10 backbone at all as we went through the whole
13:47:01 11 process. We would have never gotten to the
13:47:01 12 process in the first place, had he not been in
13:47:05 13 favor of it.

13:47:07 14 Q. Okay. Mr. Hanauer, let's see if I
13:47:08 15 can rewrite this sentence and this paragraph.
13:47:12 16 You said it should have written by a lawyer,
13:47:14 17 let me throw some things out and we'll see if
13:47:16 18 you agree or disagree that this would be more
13:47:18 19 informative and more accurate.

13:47:20 20 A. Can I ask you a question before
13:47:21 21 you start that? What is the relevance of doing
13:47:25 22 this? Why, why are we writing -- why are we
13:47:30 23 writing this? You know, I have testified that
13:47:34 24 paragraph is wrong, I would have rewritten it.
13:47:40 25 If, if it had been, to my recollection, that

13:45:34 1 forward with this whole transaction. Now
13:45:36 2 you're telling me we got to the last day and he
13:45:39 3 backed away. That's starting to get under my
13:45:42 4 crawl a little bit.

13:45:43 5 Q. Well, actually I think he did more
13:45:45 6 than back away, because he attempted to shift
13:45:46 7 responsibility for the merger from the Board of
13:45:48 8 Directors to the shareholders, because he
13:45:51 9 testified in substance, I didn't vote for this,
13:45:55 10 I didn't approve this transaction, it was the
13:45:57 11 shareholders, they voted for this, what could I
13:45:59 12 do. That seemed to be his testimony in
13:46:03 13 substance.

13:46:04 14 A. He could have stopped it, it would
13:46:05 15 have never --

13:46:06 16 MR. RAMSEY: Objection. Assumes
13:46:08 17 facts not in evidence.

13:46:08 18 A. Yeah, I don't -- I don't know what
13:46:09 19 his testimony was, but quite frankly he had --
13:46:13 20 I -- he was given many opportunities to, to
13:46:17 21 shut this whole transaction down. And he
13:46:19 22 couldn't get some of his other directors under,
13:46:22 23 under control and so, sure, he has seen --
13:46:26 24 hindsight is wonderful.

13:46:28 25 He has seen the -- what has

779

13:47:44 1 Mr. McKiernan wasn't there, certainly we would
13:47:46 2 have noted that. Had I known that Mr. Brinker
13:47:51 3 abstained from the vote, we would have put that
13:47:56 4 in there. I will stipulate to all that. Why
13:47:59 5 are we wasting time on this paragraph?

13:48:03 6 Q. Okay. I'll accept what you just
13:48:05 7 said. How about Mr. Herron's resignation, is
13:48:08 8 there anything --

13:48:08 9 A. Absolutely not. Mr. Herron was
13:48:11 10 not a part of the Board on August the 2nd. And
13:48:15 11 everybody knows that, and we've talked about
13:48:18 12 that up one side and down the other for the
13:48:21 13 last several times I've been here. And there's
13:48:24 14 nothing we can do.

13:48:27 15 We disclosed, albeit in somewhat
13:48:30 16 of a left-handed format, that he was not on
13:48:32 17 the, on the Board, because he's not listed as a
13:48:36 18 Board member. Did we disclose that Mr. Herron
13:48:40 19 several days before the vote was taken,
13:48:42 20 tendered his resignation? We did not. That is
13:48:47 21 something that was brought up with our legal
13:48:49 22 counsel and they felt that it should stay out
13:48:52 23 of the document and we left it out. That's
13:48:54 24 something I broached with him and he said leave
13:48:58 25 it out and we did not dwell on that. It's

780

13:49:02 1 immaterial to the transaction, his opinion.
 13:49:05 2 And that's what we did.
 13:49:07 3 Q. Why do you say "it's immaterial to
 13:49:09 4 the transaction"?
 13:49:10 5 A. I didn't say that, Cliff said
 13:49:13 6 that.
 13:49:14 7 Q. Oh, excuse me.
 13:49:15 8 A. Cliff said it's immaterial to the
 13:49:17 9 transaction, I didn't say that.
 13:49:19 10 Q. Did you agree with that?
 13:49:23 11 A. Having talked with Barry
 13:49:24 12 Forrester, Barry felt that it was a
 13:49:27 13 misstatement of fact, I think was his
 13:49:30 14 phraseology, that -- or a -- he had another
 13:49:35 15 term, may have been that we had left something
 13:49:37 16 out in not openly disclosing that Mr. Herron
 13:49:45 17 had left the Board, had resigned from the
 13:49:48 18 Board.
 13:49:49 19 People could infer, the
 13:49:52 20 shareholders could infer a lot of things from
 13:49:54 21 that, but I don't think it's something that,
 13:49:59 22 that correctly warranted on the face of this
 13:50:03 23 document in bold print, Tom Herron resigned
 13:50:06 24 from the Board. And I don't think it belonged
 13:50:09 25 on the first page or the second. It belonged

782

13:51:18 1 against this transaction on July 22nd, 1999.
 13:51:23 2 Shortly thereafter, he tendered his resignation
 13:51:28 3 effective July 30th, 1999. Did you ever say,
 13:51:30 4 let's be fair, let's tell the shareholders
 13:51:33 5 exactly what the deal is?
 13:51:34 6 A. No, because we didn't disclose any
 13:51:36 7 votes other than the August 2 vote. So no, it
 13:51:39 8 was not -- no.
 13:51:47 9 Q. Okay. I previously sent you Mr.
 13:51:49 10 Condren's deposition. Have you had time to
 13:51:51 11 review that?
 13:51:52 12 A. Yeah. What was the purpose of
 13:51:53 13 that?
 13:51:54 14 Q. Just so you can be fully informed.
 13:51:56 15 Do you have any --
 13:51:57 16 A. Of what?
 13:52:02 17 Q. To refresh your recollection.
 13:52:04 18 A. I'd like to have seen some of the
 13:52:05 19 other ones rather than Pat's, but that's okay.
 13:52:09 20 Q. You tell me --
 13:52:09 21 A. No.
 13:52:10 22 Q. -- what depositions you'd like to
 13:52:11 23 see, I'd be happy to send them to you.
 13:52:14 24 A. I really don't. Let's not kill
 13:52:15 25 any more trees. Yeah, I got his deposition.

781

13:50:11 1 possibly in the Board makeup piece back here,
 13:50:13 2 that he had, in fact, tendered his resignation.
 13:50:17 3 That is something that Cliff said
 13:50:20 4 and he certainly, I hope, knows a lot more
 13:50:25 5 about law than I do, said it was something that
 13:50:28 6 did not need to be in the document and,
 13:50:30 7 therefore, it is not in the document.
 13:50:33 8 Q. Okay. And Mr. Roe gave you his
 13:50:35 9 legal guidance, correct?
 13:50:38 10 A. He gave me his opinion that, and I
 13:50:39 11 called him under the guise of seeking his legal
 13:50:42 12 opinion, yes.
 13:50:43 13 Q. Okay.
 13:50:44 14 A. I was billed for that, so I would
 13:50:45 15 say it was legal, yes.
 13:50:48 16 Q. Okay. Let's put aside legal. You
 13:50:50 17 talked about how you disclosed -- you felt you
 13:50:53 18 disclosed Mr. Herron's resignation in some kind
 13:50:57 19 of a left-handed fashion. Let's talk purely
 13:51:00 20 from a fairness point of view. You have
 13:51:02 21 testified earlier that you said you're a fair
 13:51:04 22 man. Did you ever suggest to Mr. Roe or to
 13:51:06 23 anyone, hey, let's not do this in a left-handed
 13:51:10 24 fashion, let's say Mr. Herron did not agree
 13:51:16 25 with the direction of the company, he voted

783

13:52:22 1 Q. Do you have any comments on his
 13:52:22 2 deposition?
 13:52:22 3 A. He, he seemed to take the middle
 13:52:24 4 road on a few things and exonerated himself
 13:52:27 5 from some of the -- some of the things, but in
 13:52:29 6 all it was relatively factual. People's
 13:52:32 7 opinion, everybody's opinion is different, I
 13:52:34 8 guess, of their capabilities and how they're
 13:52:37 9 treated and so forth.
 13:52:38 10 I think as it relates to the
 13:52:40 11 transaction, from a Board standpoint, Pat was
 13:52:47 12 not treated fairly, his opinion was not
 13:52:49 13 requested. His opinion -- his opinion was not
 13:52:52 14 valued by the Board, and so subsequently I
 13:52:57 15 could see why he'd -- he drew some of the
 13:53:06 16 opinions of me and of the Board that he did.
 13:53:09 17 That's something that I have to shoulder.
 13:53:15 18 Q. Did his testimony with respect to
 13:53:17 19 the actions of Al Hucke several days before
 13:53:20 20 October 25th, 1999 and the special meeting of
 13:53:25 21 shareholders to approve the transaction, did
 13:53:27 22 that surprise you in any way?
 13:53:29 23 MR. RAMSEY: Objection.
 13:53:29 24 A. I'm not sure exactly what, what
 13:53:31 25 actions Pat referred to with Al, other than --

784

785

13:53:36 1 if you're referring to, you know, wanting to
13:53:42 2 procure a list to contact shareholders. Did
13:53:45 3 that surprise me? No. I was aware of the fact
13:53:51 4 that he was doing that.
13:53:52 5 Q. How about the threats to fire Pat
13:53:54 6 Condren and the entire management team if this
13:53:57 7 deal blew up for any reason other than
13:53:58 8 Provident's stock price at that time, in the
13:54:02 9 last days before October 25th?

13:54:06 10 MR. RAMSEY: Objection.

13:54:06 11 A. That didn't surprise me in reading
13:54:08 12 that. Mr. Huckle blatantly and in public
13:54:12 13 threatened to fire me on several occasions. So
13:54:14 14 that didn't -- you know, long before -- Mr.
13:54:17 15 Huckle, just a little piece of history, if you
13:54:18 16 will.

13:54:19 17 Mr. Huckle was the one that was
13:54:21 18 instrumental in terminating our employment
13:54:23 19 contracts several years prior. And he has a
13:54:27 20 history of labor-management difficulties, I
13:54:36 21 guess would be the proper phraseology. And so,
13:54:39 22 you know, he was -- from that standpoint, he
13:54:45 23 was a detractor to the company.

13:54:47 24 Had he focused his energies in a
13:54:49 25 positive light, you know, things would have,

786

13:56:11 1 form and substance, okay. I understand what
13:56:13 2 you're saying.

13:56:14 3 Q. My question now is that was not
13:56:16 4 true, meaning the Board had not met that week
13:56:18 5 and had not come to the conclusion that you and
13:56:21 6 the entire management team would be fired if
13:56:24 7 this transaction did not go through for any
13:56:27 8 reason other than Provident's stock price,
13:56:30 9 correct?

13:56:31 10 MR. RAMSEY: Objection.

13:56:32 11 A. I, I will -- I will testify that
13:56:38 12 the Board had not met formally where I was
13:56:43 13 present and minutes were taken. If they got
13:56:46 14 together, being any number of the Board, if
13:56:49 15 they got together -- I mean that certainly is
13:56:52 16 possible, because that happened frequently.
13:56:57 17 That is possible and that could be a very true
13:57:00 18 statement. I was -- I am unaware that they had
13:57:04 19 met and I am unaware of any vote, if you will,
13:57:08 20 that had been taken.

13:57:11 21 MR. BRAUTIGAM: Okay. Mr.
13:57:11 22 Hanauer, I don't have anything further for you
13:57:14 23 at this time.

13:57:15 24 THE WITNESS: Okay.

13:57:15 25 MR. BRAUTIGAM: And I would like

13:54:54 1 would have transpired a lot differently than
13:54:57 2 they did. But Mr. Huckle was one that didn't
13:55:01 3 like to relinquish power and, in fact, in
13:55:04 4 several Board meetings when we were offering
13:55:07 5 opinions, he stood up and threatened me and
13:55:10 6 told me that I could be found insubordinate.
13:55:14 7 And I pointed out to him at that
13:55:16 8 point in time that when we sat around the
13:55:18 9 table, we were all equals and that he really
13:55:21 10 should sit down and gather his thoughts before
13:55:23 11 he came at me again in that manner, because I
13:55:27 12 was not a subordinate of his when we sat in the
13:55:30 13 boardroom, I was an equal of his. So he had --
13:55:35 14 he had difficulties with us.

13:55:36 15 Q. If you remember the specific
13:55:37 16 testimony, Mr. Huckle told Mr. Condren that if
13:55:42 17 this deal collapsed, the entire Board would --
13:55:46 18 excuse me, the entire management team would be
13:55:49 19 fired, and that the Board had met and he had
13:55:52 20 the Board's backing to make these
13:55:54 21 representations in substance. Do you remember
13:55:56 22 in substance that testimony?

13:55:58 23 MR. RAMSEY: Objection.

13:56:00 24 A. I do not draw immediately on, on
13:56:04 25 that, but I will accept that, that in there in

787

13:57:16 1 to close this deposition and wrap it up
13:57:18 2 completely.

13:57:19 3 THE WITNESS: Okay.

13:57:19 4 MR. BRAUTIGAM: But I cannot do
13:57:20 5 that because full discovery has not been made,
13:57:23 6 meaning there are several things that you have
13:57:26 7 referenced as existing that presumably are in
13:57:29 8 the hands of KMK that I have not received. And
13:57:31 9 I am going to shut it down for today.

13:57:35 10 THE WITNESS: Okay.

13:57:36 11 MR. BRAUTIGAM: And I'll take that
13:57:36 12 up with Mr. Burke and Jamie and see what the
13:57:39 13 deal is.

13:57:40 14 THE WITNESS: Okay. Are these
13:57:41 15 documents that I had referenced earlier?

13:57:43 16 MR. BRAUTIGAM: For example, one
13:57:44 17 was a lavender legal pad and there was several
13:57:47 18 other references in your deposition to
13:57:50 19 documents that I have not received.

13:57:52 20 THE WITNESS: I'm not sure that
13:57:53 21 those are in the hands of KMK. Those were
13:57:56 22 shipped --

13:57:57 23 MR. BRAUTIGAM: To Dinsmore?

13:57:58 24 THE WITNESS: To Dinsmore, right.

13:58:07 25 MR. BRAUTIGAM: Right.

788

13:58:07 1 THE WITNESS: So I won't blame
13:58:07 2 them. I don't know that they're there. They
13:58:07 3 may be in Dinsmore's --
13:58:07 4 MR. BRAUTIGAM: As per my
13:58:09 5 understanding of the testimony, they existed.
13:58:10 6 THE WITNESS: They existed.
13:58:11 7 MR. BRAUTIGAM: You were very
13:58:12 8 specific about where you last saw them, they
13:58:16 9 were shipped to Dinsmore and I'm assuming the
13:58:18 10 material from Dinsmore went to KMK.
13:58:21 11 THE WITNESS: Okay.
13:58:22 12 MR. RAMSEY: Are you going to be
13:58:24 13 calling him again? You don't know?
13:58:25 14 MR. BRAUTIGAM: I don't know until
13:58:27 15 I get the documents.
16 MR. RAMSEY: I have a few
17 questions for you.
18 EXAMINATION
19 BY MR. RAMSEY:
13:58:33 20 Q. Now, as a shareholder, you voted
13:58:37 21 your shares against the transaction --
13:58:39 22 A. That's correct.
13:58:40 23 Q. -- because it was your personal
13:58:41 24 belief that it was better to remain
13:58:44 25 independent?

790

14:00:18 1 voted and you'd know how people -- you didn't
14:00:21 2 really have to abstain.
14:00:22 3 So it was displeasure with, with
14:00:25 4 the way that the transaction came about. It
14:00:29 5 was not really displeasure with, with the
14:00:33 6 ultimate buyer at that point in time, it was
14:00:36 7 just voicing displeasure, period. And it was
14:00:40 8 something that I felt like I wanted to do.
14:00:45 9 Q. Do you believe that the Board of
14:00:48 10 Directors, when they voted in favor of this
14:00:50 11 transaction, believed that it was in the best
14:00:53 12 interest of the shareholders?
14:00:55 13 MR. BRAUTIGAM: Objection.
14:00:59 14 A. I think so, and certainly I tried
14:01:04 15 to give them enough information that we could
14:01:10 16 have gotten to this point in a different
14:01:13 17 fashion. But do I believe that they thought it
14:01:17 18 was in the best interest? I believe they did.
14:01:21 19 They had -- and in private
14:01:24 20 conversations and around the Board table, you
14:01:27 21 know, everybody had some of their own money in
14:01:30 22 the transaction or in the company. And I think
14:01:35 23 they always looked for a, a bigger return and a
14:01:41 24 snappier return -- a quicker, quicker return of
14:01:45 25 their money.

13:58:46 1 MR. BRAUTIGAM: Objection to
13:58:46 2 personal belief.
13:58:50 3 A. I wanted, I wanted the company in
13:58:59 4 the, I guess the original sense -- or the
13:59:02 5 deepest sense, I wanted the company to remain
13:59:05 6 independent. I also wanted just to express my,
13:59:15 7 I guess displeasure with the, the general
13:59:20 8 transaction in that way. And so I voted -- so
13:59:24 9 I voted against the transaction.
13:59:26 10 I don't know. I did not disclose
13:59:28 11 that to anyone. I did not run around saying I
13:59:35 12 was going to vote for the transaction, but I
13:59:37 13 did not disclose to anyone that I was going to
13:59:39 14 vote my shares against the transaction, because
13:59:42 15 quite frankly, I feel that everyone has, you
13:59:47 16 know, their right to vote their shares without
13:59:52 17 somebody trying to sway them one way or
13:59:56 18 another.
13:59:58 19 And it's interesting, it goes back
14:00:00 20 to a vote that we had several years ago when
14:00:04 21 Mr. Huckle abstained from the voting of his
14:00:07 22 shares that year. And when we asked him why
14:00:10 23 did you do that, he said I didn't want to taint
14:00:12 24 the vote. Well, you could always see what the
14:00:15 25 vote was, do the math on how many shares you

791

14:01:46 1 I often said when you -- and I'm
14:01:50 2 not there, but when you become 70 plus years of
14:01:53 3 age, you don't have the staying power, you
14:01:57 4 don't have the ability to wait for a return as
14:02:00 5 long as a person 50 years old does. And so I
14:02:05 6 think they viewed it that way as well, that
14:02:09 7 this is a way that, that they could create some
14:02:14 8 additional wealth for themselves, as well as
14:02:19 9 the shareholders.
14:02:20 10 And I think they thought that it
14:02:23 11 was the best -- it was purported to them by
14:02:25 12 McDonald that it was -- it was a good
14:02:27 13 transaction, it was the best transaction and it
14:02:30 14 would be good for the shareholders. I think
14:02:33 15 they bought into that.
14:02:35 16 Q. Okay. Assuming you disagreed with
14:02:37 17 the transaction, would you characterize that as
14:02:40 18 just a legitimate business disagreement with
14:02:43 19 the Board of Directors?
14:02:45 20 MR. BRAUTIGAM: Objection.
14:02:48 21 A. Yeah, it -- it was a, a legitimate
14:02:53 22 disagreement, I think, a business disagreement.
14:02:59 23 We had offered up a couple of other
14:03:00 24 alternatives and, and it was literally the
14:03:04 25 opinion of different folks that this bank is

14:03:10 1 better, this bank isn't, this bank isn't big
14:03:14 2 enough, this bank doesn't have as much --
14:03:17 3 enough liquidity, that if I would want to sell
14:03:20 4 the majority of my shares at one time, I
14:03:23 5 couldn't do that, I would have to wait and do
14:03:26 6 that in dribbles and drabs. So I think all in
14:03:31 7 all, it was -- it was just a legitimate
14:03:34 8 disagreement as to whether it was -- the
14:03:39 9 transaction was a good one or bad one.

14:03:48 10 Q. Okay. Do you believe that there
14:03:49 11 were any material facts omitted from the proxy
14:03:52 12 statement?

14:03:52 13 A. As, as we have gone around and
14:03:54 14 around and reviewed those, I believe that there
14:04:06 15 could have been some rewording, especially on
14:04:10 16 the front page as we talked about today, that
14:04:15 17 would have been correct as opposed to the
14:04:18 18 document that we have in front of us. Is that
14:04:24 19 material? I don't know that I can weigh
14:04:28 20 material in that regard.

14:04:31 21 And I have no way of knowing
14:04:33 22 whether there would -- whether that would have
14:04:36 23 had any other outcome. We've chatted about
14:04:40 24 some of the other things within the, within the
14:04:46 25 document, Mr. Herron's resignation and those

794

14:06:10 1 management agreements. I believe it was
14:06:12 2 referred in the document as June when, in fact,
14:06:14 3 it was the end of July.

14:06:18 4 I don't know whether that would
14:06:19 5 have caused any concern or not. There are
14:06:23 6 several people within our organization, Mr.
14:06:26 7 Condren was one of them, that believed that,
14:06:29 8 you know, the majority of the people when
14:06:32 9 they're handed a document that size do not read
14:06:34 10 it page for page as the people that wrote it.

14:06:40 11 And as you can see and as we have
14:06:43 12 discovered through this process, even reading
14:06:46 13 it page for page, line by line, there can be,
14:06:50 14 there can be differences of opinion and there
14:06:52 15 can be some omissions. I don't think there was
14:06:57 16 anything on my part that was deliberately left
14:07:01 17 out of the document or misleading. There were
14:07:04 18 things that I put in the document that were
14:07:06 19 omitted by legal counsel, and that was their
14:07:12 20 prerogative to do that.

14:07:18 21 Q. Okay. Is it your testimony that
14:07:19 22 this is not necessarily the transaction that
14:07:22 23 you would have liked, but in the end, you were
14:07:26 24 comfortable with it?

14:07:28 25 MR. BRAUTIGAM: Objection.

14:04:47 1 types of things. Again, relying on legal
14:04:51 2 counsel and, and setting my personal opinion
14:04:55 3 aside -- and certainly we paid good money for
14:04:58 4 that counsel, he said that those were not
14:05:02 5 material to the transaction.

14:05:06 6 And so I guess my, my testimony
14:05:10 7 would be that even though a general feeling is
14:05:15 8 if you did have a -- if you could have a
14:05:18 9 perfect document, there would be a little more
14:05:20 10 in it. Whether that constitutes material or
14:05:24 11 not, I don't know. I don't know whether it
14:05:28 12 does.

14:05:29 13 Q. Is it your testimony that -- is
14:05:36 14 there anything about the proxy statement, if
14:05:38 15 done differently, that would have changed the
14:05:43 16 vote?

14:05:45 17 MR. BRAUTIGAM: Objection. That's
14:05:46 18 ridiculous.

14:05:49 19 A. We talked -- one of the things
14:05:50 20 that we talked about -- I don't know whether it
14:05:53 21 would have changed the vote, it could have
14:05:55 22 raised some questions that might have been
14:05:57 23 asked of the Board. For example, the -- I
14:06:01 24 believe there was a -- after the printing there
14:06:04 25 was a misstatement of the signing of the

795

14:07:29 1 A. After it was -- the transaction
14:07:33 2 that I would have liked would have been another
14:07:35 3 transaction, I'll be candid about that. It was
14:07:39 4 not something that I -- I had sought more of a
14:07:43 5 merger of equals type transaction. Having
14:07:51 6 started down the road with this transaction
14:07:55 7 and, and once we had actually signed a contract
14:07:59 8 with McDonald, we assimilated the marketing
14:08:07 9 materials.

14:08:07 10 At that point I believe that you
14:08:10 11 go for continuity and closure in a transaction.
14:08:19 12 You do not put yourself up for sale, take
14:08:21 13 yourself off of the market, put yourself up for
14:08:24 14 sale, take yourself off of the market again.
14:08:27 15 It is obvious that -- and everything has to do
14:08:30 16 with timing. And it is obvious with the, I
14:08:33 17 believe five companies that we were shopped to,
14:08:35 18 ultimately four had no interest at that time.

14:08:44 19 Now, our guys could have closed
14:08:47 20 the process down and waited. There was
14:08:51 21 allegations that -- and they were
14:08:57 22 unsubstantiated because I never got a call from
14:09:02 23 anyone, but unsubstantiated allegations that
14:09:06 24 Fifth Third had too much on their plate and
14:09:08 25 they would do this and they would do that, and

796

14:08:10 1 everybody knows that Fifth Third overpays and
14:09:13 2 all of those types of things.
14:09:15 3 But I think once you enter into
14:09:16 4 this process and once you are -- you have
14:09:20 5 marketed yourself, then I felt, and this is why
14:09:24 6 I voted -- one of the reasons I voted on August
14:09:27 7 2, I felt that you don't -- you can't stop the
14:09:31 8 transaction and act like it never happened, go
14:09:38 9 down the road a year and a half or two years
14:09:40 10 later and gear it up again and be effective.

14:09:43 11 It has had impact on the
14:09:45 12 management team, it has had impact on Board
14:09:48 13 members, on relationships and other things, and
14:09:51 14 it's not going to be the same. So the cloud is
14:09:54 15 not going to be going in the same direction as
14:09:56 16 it was before. There's going to be a lot of
14:09:58 17 forces tearing it apart. So when we got to
14:10:02 18 this part of the transaction, I felt it was
14:10:05 19 good to finalize the transaction, not to -- not
14:10:09 20 to stop the transaction and, and do something
14:10:12 21 totally different.

14:10:13 22 Q. In the end when all was said and
14:10:16 23 done, do you think that the transaction was a
14:10:17 24 good transaction?

14:10:19 25 MR. BRAUTIGAM: Objection.

798

14:12:01 1 Q. How about when the deal went
14:12:02 2 through, did you think it was good thing?

14:12:04 3 MR. BRAUTIGAM: Objection. What
14:12:05 4 time exactly are we talking about, December
14:12:07 5 3rd, 1999?

14:12:10 6 Q. When the deal was closed.

14:12:11 7 A. Yeah. When all was said and done,
14:12:14 8 I think from a corporate Board perspective,
14:12:21 9 yes. I would have liked to have seen the
14:12:23 10 management of, of Provident do things
14:12:27 11 differently, both for our personnel and quite
14:12:35 12 frankly for our customers as well. But we had
14:12:37 13 totally different operational styles, totally
14:12:40 14 different operational philosophies.

14:12:44 15 People discussed with me and have
14:12:48 16 chatted later that they don't care for
14:12:52 17 Provident, some don't, some do. You know, it
14:12:56 18 was change and people don't like change. And
14:12:59 19 there's no way that you can go through a
14:13:02 20 merger, a merger of, of companies at this
14:13:08 21 magnitude and not have some drastic change.

14:13:12 22 And I think we looked to have
14:13:17 23 maybe a little more insight into that and that
14:13:20 24 didn't happen. And depending upon who you talk
14:13:22 25 to within Provident, some would have liked to

14:10:24 1 A. One year later and having
14:10:27 2 Provident's stock price tank, and we have no
14:10:33 3 control over that, if I had it to do over
14:10:40 4 again, I would have liked to have possibly
14:10:45 5 structured the exchange ratio differently. We
14:10:50 6 all know now that it was -- Provident was at
14:10:55 7 one of its highest points at the time that the
14:10:58 8 exchange ratio was set. And certainly you
14:11:01 9 can't hold a transaction open for a year, but
14:11:04 10 you know, it had gone down and it went back up.

14:11:07 11 And when we signed the intent was
14:11:11 12 when it was high and then it dropped. And I
14:11:18 13 think there was some disservice possibly on the
14:11:20 14 part of McDonald to, to have not helped us with
14:11:30 15 that a little bit. They've seen that thing
14:11:33 16 happen before. They chalk it up to, well,
14:11:36 17 that's what the market does.

14:11:37 18 And certainly I would have a
14:11:38 19 totally different opinion if Provident was
14:11:41 20 trading at 60, so -- and that's just from a
14:11:44 21 personal standpoint, but a lot of individuals,
14:11:46 22 and I don't know -- I obviously cannot speak
14:11:48 23 for where OHSL would be trading today, because
14:11:51 24 certainly the financial industry as a whole has
14:11:54 25 been beaten up pretty good right now. So --

799

14:13:25 1 have had us involved a little more, but the
14:13:28 2 transaction was -- I've never been involved in
14:13:32 3 a transaction like this before, so I don't
14:13:39 4 know, I guess. What I would have liked to have
14:13:42 5 happened and what happened was a little
14:13:43 6 different.

14:13:44 7 Q. Do you think that at the time it
14:13:45 8 closed, it was a fair transaction?

14:13:48 9 A. It was fair. It, it was for --
14:13:54 10 for the shareholders, I would have to say it
14:14:01 11 was fair. And again as, you know, they were
14:14:04 12 given enough information to vote the
14:14:10 13 transaction down if they did not, you know, if
14:14:13 14 they did not want it. So I think that's where
14:14:17 15 a lot of times we get caught up in the personal
14:14:24 16 things. And they voted that they wanted
14:14:27 17 something different and so we have to respect
14:14:30 18 that. Don't have to like it, but we have to
14:14:33 19 respect it and that's fine.

14:14:37 20 MR. RAMSEY: That's all I have.

21 RECROSS-EXAMINATION

22 BY MR. BRAUTIGAM:

14:14:38 23 Q. Okay. I have a few follow-up
14:14:41 24 questions based on what Mr. Ramsey asked.

14:14:44 25 A. Okay.

800

14:14:44 1 Q. First of all, you just said that
14:14:45 2 you felt the shareholders were given enough
14:14:48 3 information to vote the transaction down if
14:14:50 4 they didn't want it. Do you remember that?
14:14:52 5 A. Yes, sir.
14:14:53 6 Q. Okay. Were the shareholders given
14:14:54 7 the information that the Chairman of the Board
14:14:56 8 did not take a position on this with respect to
14:14:58 9 the Board meeting on 8/2/99?
14:15:03 10 MR. RAMSEY: Objection.
14:15:03 11 A. You know they were not given that
14:15:05 12 information.
14:15:06 13 Q. Okay. Were the shareholders given
14:15:07 14 the information that one of the members of the
14:15:09 15 ad hoc committee, Tom McKiernan, was not even
14:15:13 16 in the country and thus did not vote on the
14:15:15 17 transaction, contrary to what's reflected on
14:15:18 18 the first page of the document?
14:15:20 19 MR. RAMSEY: Objection.
14:15:20 20 A. They were not given that
14:15:21 21 information, no.
14:15:22 22 Q. Okay. Were the shareholders given
14:15:23 23 the information, except in a left-handed way,
14:15:26 24 that Mr. Herron had voted against the
14:15:29 25 transaction and then resigned?

802

14:16:53 1 materiality with the outcome of the
14:16:56 2 transaction, meaning, well, we might have done
14:17:00 3 some things differently, but I don't think it
14:17:02 4 would have changed the outcome of the
14:17:04 5 transaction. Are you with me on that?
14:17:11 6 A. Yes, sir, I am.
14:17:11 7 Q. Okay. Do you believe that there
14:17:11 8 is a link to materiality and changing the
14:17:11 9 outcome of the transaction?
14:17:14 10 A. I do not know to what degree
14:17:20 11 materiality would have, would have or can
14:17:25 12 change an outcome of any transaction. To be
14:17:31 13 very specific, I do not know what makes up
14:17:36 14 material versus immaterial. When it comes to
14:17:41 15 this, this transaction, as we have discussed
14:17:49 16 correct and incorrect -- and not correct, I can
14:17:53 17 see that the term unanimously is not a correct
14:17:58 18 term. Whether that is a material fact or not,
14:18:06 19 I'm not sure. I cannot draw that distinction.
14:18:13 20 So to, to elaborate on your point
14:18:16 21 then, leaving out unanimously and had that
14:18:24 22 paragraph read your Board of Directors
14:18:26 23 approved, which I believe we all say would --
14:18:32 24 was -- would be more correct than unanimously
14:18:35 25 approved, would that have changed the outcome

14:15:31 1 MR. RAMSEY: Objection.
14:15:34 2 A. Mr. Herron -- I will answer no to
14:15:37 3 that. Mr. Herron never had the opportunity to
14:15:41 4 vote against the transaction. There was only
14:15:47 5 one vote taken and that was the vote on August
14:15:52 6 2nd to accept that and go forward. We had
14:15:59 7 votes at other points -- at other points in
14:16:02 8 time for different situations, but when we came
14:16:06 9 down to the final vote to accept the
14:16:10 10 transaction as presented and negotiated, we
14:16:14 11 only did that one time and he was not a member
14:16:17 12 of the, the Board at that time.
14:16:20 13 Q. Okay.
14:16:21 14 A. So that was not -- he did not have
14:16:27 15 an opinion to be expressed at that time.
14:16:28 16 Q. Okay. But on July 22nd, 1999 at a
14:16:33 17 special meeting of the Board of Directors of
14:16:35 18 OHSL Financial, Mr. Herron voted against
14:16:38 19 continuing negotiations with respect to this
14:16:40 20 transaction, correct?
14:16:41 21 A. That's correct. He voted, he
14:16:42 22 voted against continuing the negotiations.
14:16:46 23 Q. Okay. In some of your previous
14:16:48 24 answers when Mr. Ramsey was asking you
14:16:51 25 questions, you seemed to link the definition of

803

14:18:40 1 of this transaction? My testimony would be, my
14:18:43 2 belief is no, it would not have. I believe the
14:18:52 3 word approved is strong enough in that
14:18:55 4 paragraph that the word unanimously did not,
14:19:02 5 did not do. Would it have changed the vote
14:19:05 6 slightly? Maybe, but I don't know that.
14:19:08 7 Q. Now, Mr. Hanauer, your belief that
14:19:10 8 this would not have changed the outcome of the
14:19:13 9 transaction is unknown and unknowable. Meaning
14:19:16 10 there's no way to test this?
14:19:18 11 A. Absolutely. Absolutely.
14:19:19 12 Q. So this is just, in a sense, your
14:19:21 13 wild speculation, correct?
14:19:22 14 A. You can call it wild, yes.
14:19:25 15 Q. Okay. Have you ever heard a
14:19:27 16 definition from Mr. Roe or anyone that talks
14:19:30 17 not about changing the outcome of the
14:19:32 18 transaction, but information that would be of
14:19:35 19 interest to a reasonable shareholder with
14:19:40 20 respect to the total mix of information
14:19:42 21 available to him or her in the marketplace?
14:19:44 22 A. From Mr. Roe, no.
14:19:45 23 Q. Have you ever heard a definition
14:19:46 24 that refers to the total mix of information
14:19:50 25 that a reasonable shareholder would be

14:19:51 1 interested in in your conversations with Mr.
14:19:54 2 Forrester or with anyone with respect to a
14:19:56 3 definition of materiality?
14:19:58 4 A. Yes. And we've testified to that
14:20:00 5 fact early on.
14:20:04 6 Q. Okay. You testified previously
14:20:06 7 when Mr. Ramsey was asking you questions that
14:20:09 8 you felt that there was nothing in the proxy
14:20:11 9 materials and the prospectus that was
14:20:14 10 deliberately misleading. Do you remember that
14:20:16 11 testimony?
14:20:17 12 A. Yes, sir. I, I believe I
14:20:20 13 testified that I put nothing in or took
14:20:24 14 anything out that would deliberately mislead
14:20:27 15 people.
14:20:28 16 Q. Okay. Do you think that, given
14:20:29 17 some of the representations that I've asked you
14:20:30 18 to accept and our discussion over what's been
14:20:34 19 four days now, that whether it's deliberate or
14:20:37 20 not, this document has the effect of being
14:20:41 21 misleading, at least in certain areas?
14:20:45 22 MR. RAMSEY: Objection.
14:20:51 23 A. I -- you could draw the conclusion
14:20:52 24 that it could have a misleading effect.
14:21:00 25 Q. Okay. You also testified, and I

14:21:01 1 was surprised by this, that with respect to
14:21:06 2 what made it into the final document, that it
14:21:09 3 was up to legal counsel, and you used the
14:21:11 4 phrase, that was their prerogative. Why did
14:21:14 5 you believe that to be the case?
14:21:18 6 A. I had reviewed different pieces of
14:21:22 7 the document and questions that Mr. Forrester
14:21:26 8 had brought to me, and again we have outlined
14:21:29 9 these in our part of the -- part of my prior
14:21:34 10 testimony. And when we reviewed those with,
14:21:36 11 with Mr. Roe, he said that those were not
14:21:42 12 things that would cause any difficulty, they
14:21:47 13 did not need to be included in the -- he would
14:21:50 14 not rewrite the document, they did not need to
14:21:53 15 be included.
14:21:54 16 One of the questions that -- or
14:21:58 17 one of the things as we initially wrote the
14:22:02 18 document up, Mr. Condren and I, was an account
14:22:09 19 of the thought processes that the ad hoc
14:22:17 20 committee had gone through and the members --
14:22:20 21 the makeup and the members of the ad hoc
14:22:23 22 committee. And a large portion of that had
14:22:29 23 been removed from the document as well in one
14:22:33 24 of the first readings of it.
14:22:36 25 Q. This document that you just

806
14:22:38 1 referred to, an account of the thought process
14:22:40 2 of the ad hoc committee, that existed in draft
14:22:44 3 form to be inserted into this document or not
14:22:46 4 inserted at some point, correct?
14:22:48 5 A. When we started putting the
14:22:50 6 document together, you know, you -- we had a
14:22:53 7 lot of different pages. And literally it was
14:22:55 8 in the document. It was typeset, it was in the
14:22:58 9 document and it was taken out.
14:23:01 10 Q. Okay. I don't believe that I've
14:23:02 11 seen that, so when is the last time you've seen
14:23:04 12 that?
14:23:04 13 A. Mr. Condren had that document. He
14:23:07 14 was -- he was the keeper. He was our scribe,
14:23:12 15 if you will. He was the person that kept all
14:23:15 16 of that -- all of that information. And that,
14:23:18 17 again, would have been sent down to Cliff. He
14:23:23 18 bundled up boxes of information and sent --
14:23:26 19 three boxes of information, I believe, was sent
14:23:29 20 down to --
14:23:30 21 Q. And why did you believe that that
14:23:32 22 account should have been included in the
14:23:34 23 document?
14:23:36 24 A. I felt it was, it was of
14:23:40 25 interest -- or would be of interest to our

807
14:23:44 1 local shareholders of who drove the transaction
14:23:52 2 to get it to that point. I would characterize
14:23:52 3 that also as a vindictive move at this point,
14:23:53 4 but it was something that, you know, if they
14:24:02 5 felt so strongly about it, then once the
14:24:03 6 document came out, let them answer the
14:24:06 7 questions on it.
14:24:07 8 Q. Now, you testified that you felt
14:24:08 9 McDonald had done OHSL and its shareholders a
14:24:11 10 disservice. Other than what you mentioned, is
14:24:14 11 there anything else that you want to point out
14:24:16 12 where you felt that OHSL and its shareholders
14:24:19 13 were ill served by McDonald?
14:24:22 14 MR. RAMSEY: Objection.
14:24:29 15 A. You always look for personal
14:24:32 16 service when you hire professionals. And
14:24:40 17 Charlie Crowley was -- his attentions were,
14:24:47 18 were geared to Al Huckle and not to myself. I
14:24:53 19 took that as a personal affront that I felt
14:25:01 20 that maybe I didn't command his respect, but I
14:25:06 21 deserved his respect as the president and CEO
14:25:11 22 of both Oak Hills Savings and OHSL Financial.
14:25:15 23 And over my objections, which very
14:25:17 24 possibly could have been shared with Charlie
14:25:19 25 over time, his company was hired. I would not

14:25:23 1 put that past Mr. McKiernan or Mr. Huckle, to
14:25:29 2 let Charlie know that I was not in favor of him
14:25:33 3 being hired to do it -- to do the transaction.
14:25:37 4 We overpaid, I had informal bids less than what
14:25:43 5 he charged, and it was my personal opinion we
14:25:48 6 could have got a better job, but the Board
14:25:50 7 would not hear of it, because they felt that
14:25:54 8 these people were too closely aligned with
14:25:57 9 myself and the management team.
14:25:59 10 Q. And when you say you overpaid,
14:26:01 11 other than a token payment, I think \$15,000,
14:26:05 12 had the transaction not gone through, McDonald
14:26:08 13 would not have received a lot of money,
14:26:10 14 correct?
14:26:15 15 A. Well, they got 15 on the front and
14:26:12 16 a total of 50 to put the book together and do
14:26:15 17 some other things, but right, had the
14:26:17 18 transaction failed -- yeah, they were paid on
14:26:20 19 performance, right.
14:26:21 20 Q. And performance in this case means
14:26:24 21 closing the transaction?
14:26:25 22 A. Got to go or they don't get any
14:26:27 23 money, correct.
14:26:28 24 Q. Okay. Now, in one of your
14:26:29 25 previous answers, you used the phrase sway one

810

14:27:21 1 done for today.
14:27:22 2 THE WITNESS: Okay.
14:27:23 3 MR. BRAUTIGAM: And I thank you
14:27:24 4 for your time.
14:27:25 5 THE WITNESS: All right. And if
14:27:26 6 you need anything else, certainly feel free to
14:27:29 7 get me. I'm not leaving the jurisdiction.
14:27:31 8 I'll be here.

11
12 KENNETH HANAUER

14
15 (Deposition concluded at 2:22 p.m.)
16
17
18
19
20
21
22
23
24
25

14:26:32 1 way or another. Do you remember using that
14:26:34 2 phrase?
14:26:35 3 A. Can you help me with where I used
14:26:37 4 it?
14:26:38 5 Q. It was with respect to a question
14:26:40 6 that Jamie asked you, and I wasn't actually
14:26:43 7 sure of the context and I wanted to follow up
14:26:45 8 on that. Let me ask the next question.
14:26:47 9 A. Okay.
14:26:48 10 Q. You agree with me, do you not,
14:26:51 11 that the prospectus and the proxy materials are
14:26:54 12 documents that do -- that are intended to sway
14:26:56 13 the shareholders to vote in favor of the
14:26:58 14 transaction, correct?
14:27:00 15 MR. RAMSEY: Objection.
14:27:03 16 A. Yes, I believe that -- I believe
14:27:06 17 that they are written in that regard, yes.
14:27:08 18 Q. All right. In fact --
14:27:10 19 A. Sure.
14:27:11 20 Q. In fact, it says on the first
14:27:12 21 page, the Board unanimously recommends and
14:27:14 22 advises that you approve the transaction.
14:27:16 23 A. Sure, sure.
14:27:18 24 MR. BRAUTIGAM: All right.
14:27:18 25 Subject to what I have said, I think that we're

811

1 CERTIFICATE
2 STATE OF OHIO:
3 SS:
4 COUNTY OF HAMILTON:
5 I, Lee Ann Williams, a duly qualified
6 and commissioned notary public in and for the
7 State of Ohio, do hereby certify that prior to
8 the giving of his deposition, the within named
9 KENNETH HANAUER was by me first duly sworn to
10 testify the truth, the whole truth and nothing
11 but the truth; that the foregoing pages
12 constitute a true and correct transcript of
13 testimony given at said time and place by said
14 deponent; that said deposition was taken by me
15 in stenotypy and transcribed under my
16 supervision; that I am neither a relative of
17 nor attorney for any of the parties to this
18 litigation, nor relative of nor employee of any
19 of their counsel, and have no interest
20 whatsoever in the result of this litigation.
21 IN WITNESS WHEREOF, I hereunto set
22 my hand and official seal of office at
23 Cincinnati, Ohio this ____ day of
24 _____, 2000.
25 MY COMMISSION EXPIRES: _____
AUGUST 26, 2004 LEE ANN WILLIAMS, RPR/CRK
NOTARY PUBLIC-STATE OF OHIO